



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 11-16

February 27, 2014

Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in
Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls.

PROCEDURAL ORDER

I. Discovery Schedule

On January 29, 2014, and amended on February 24, 2014, the parties in the above-titled investigation submitted the following discovery schedule at the request of the Massachusetts Department of Telecommunications and Cable ("Department"):

- Initial non-expert discovery served by March 10, 2014.
- Responses and objections thereto due by April 22, 2014.
- Discovery motions on first set of discovery served by May 20, 2014.
- Second set of discovery to be served within fourteen (14) days from any responses due as a result of Department resolution of discovery motions.
- Close of non-expert discovery shall be the date of service of the second set of discovery, if any.

The Department, pursuant 220 C.M.R. § 1.06(6)(a), hereby adopts the submitted discovery schedule.

II. Ground Rules

This proceeding shall be conducted in accordance with applicable provisions of G. L. c. 30A, 220 C.M.R. §§ 1.00 *et seq.*, and the following supplemental ground rules:

A. Filing of Documents

1. Address of Filings

The original of all filings must be filed with Catrice C. Williams, Secretary, Department of Telecommunications and Cable, 1000 Washington Street, Suite 820, Boston, Massachusetts, 02118. Submission of an electronic version of all filings to the Department Secretary and the service list by close of business on the applicable due date with overnight mail of the original to the Department is acceptable.

2. Format

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing and noting the distribution of copies.

Responses to information and record requests shall contain the following information:

(1) set and question number; (2) recitation of request; and (3) identity of person who will support the response.

3. Number of Copies

The Department requires documents to be filed in the following manner:

One (1) original addressed to Catrice C. Williams, three (3) copies submitted to the hearing officer, and one (1) copy submitted to each Department staff member listed on the service list.

4. Electronic Filing

Copies of all nonproprietary documents that are filed with the Department, including letters, comments, pleadings and briefs, must also be submitted to the Department in electronic format using one of the following methods: (1) by email attachment to dtc.efiling@massmail.state.ma.us and catrice.williams@state.ma.us; or (2) on a CD-ROM, except that each attachment larger than 10 megabytes must be submitted on a CD-ROM. The text of the email or the CD-ROM label must specify: (1) the case caption, “In re Prison Phones”; (2) docket number, D.T.C. 11-16; (3) name of the party submitting the filing; and (4) title of the document. The electronic filing should also include the name, title, and phone number of a person to contact in the event of questions about the filing. Electronic copies should be written as either Microsoft Word, or Adobe Acrobat compatible files. Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department’s website, <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/>. Electronic copies must also be provided to all persons on the service list for this proceeding. Parties filing documents containing proprietary or other confidential materials shall submit electronic copies of the redacted public version of such documents. See rules on protected materials below.

B. Exchange of Materials

All documents filed with the Department shall also be served upon each party. Parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission (“fax”), e-mail, or other speedy means of delivery. Where material is exchanged by means of fax or other electronic means, a follow-up copy of the material must be delivered by mail or by hand. Service is

effective upon receipt, not upon mailing. Fax or other means of electronic delivery are not substitutes for filing the original of materials that must be filed with Catrice C. Williams, Secretary of the Department.

C. Motions

Consistent with 220 C.M.R. § 1.04(5), any motion, unless made during a hearing, shall be made in writing. The moving party shall serve with the motion a statement of reasons, including the supporting authorities, why the motion should be granted. A statement of reasons may be included in the motion itself or may be contained in a separate document. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be served with the motion. A party opposing a motion may serve an opposition (1) within seven (7) calendar days after service of a motion other than a motion for summary judgment, (2) twenty-one (21) calendar days after service of a motion for summary judgment, or (3) such additional time as is allowed by the Department upon a showing of good cause. With the opposition, the party may serve a statement of reasons, with supporting authorities, why the motion should not be allowed. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be served with the opposition. Papers not served with the motion or opposition may be filed only with leave of the hearing officer.

D. Discovery

1. Responses

Unless otherwise stated in the procedural schedule herein or indicated by the Hearing Officer, parties shall provide responses to Information Requests within five (5) business days of issuance of the request. Where the computed response date is a legal holiday, the response shall be due on the next Department business day.

2. Protected Materials

Where information or material is sought that is considered proprietary or protected by one party, the parties must confer on the use of a non-disclosure agreement before coming to the Department for protection or compelled submission. The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. *See* G. L. c. 25, § 5D; G. L. c. 66, § 10; G. L. c. 4, § 7, cl. twenty-sixth.

A party moving for confidential treatment must submit its request in writing and state the reasons therefor. The party seeking such treatment has the burden to demonstrate that the materials should be afforded the treatment requested in light of the presumption that such information is a public record. Even where a party proves such need for confidential treatment, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect.

Any request for confidential treatment must include, in a sealed envelope, one unredacted copy of the materials for which protection is sought, clearly marked with the words “CONFIDENTIAL” on the outside envelope as well as on each page of the materials. Electronic copies of unredacted materials should be submitted on a CD-ROM labeled “CONFIDENTIAL.” The unredacted copy should be submitted directly to the hearing officer, not to the Secretary. A redacted copy of the materials (marked as such) for the public docket should be filed with the Department along with the request for confidential treatment.

3. Discovery Disputes

Counsel for each of the parties shall confer in advance of filing any discovery motion in a good faith effort to narrow areas of disagreement to the fullest possible extent. Counsel for the

party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice.

All motions arising out of a party's response to, or asserted failure to comply with, an information or record request, shall be accompanied by a brief. With respect to each request for proprietary treatment or other information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request; (2) the opponent's response; and (3) a specific legal and factual argument.

E. Hearing Exhibits

1. Format

Documents submitted as exhibits shall be pre-marked by the parties using the following format, in the upper right-hand corner of each exhibit:

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Exhibit:

Date:

H.O.: Lee

Parties are requested to Bates label in sequential order all documents produced in response to an Information Request. Any exhibit offered in this proceeding should contain an internally consistent and usable form of referencing. Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

2. Offering of Exhibits

One week prior to the evidentiary hearing, each party that offers exhibits shall submit a proposed exhibit list that presents (1) an exhibit number and (2) a description of the exhibit. The proponent of an exhibit must offer the Department the appropriate number of bench copies of the proposed exhibit (standard three-hole punch). Nonconforming documents will not be marked. If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must enter the missing part(s) into the record. Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number and (2) a description of the exhibit.

F. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness at the hearing. 220 C.M.R. § 1.06(h). As such, they are part of the evidentiary record, unless challenged as unresponsive and stricken in whole or in part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination. Objections to record requests shall be made at the time the request is made and in no event later than the end of the next Department working day.

The ordinary time for response to a record request will be the fifth business day following the day on which the request is made, unless otherwise stated in the procedural schedule herein or indicated by the Hearing Officer.

G. Hearing Arrangements

Evidentiary hearings will be conducted at the Department's facilities at 1000 Washington Street according to a schedule established by the parties, unless otherwise indicated by the

Hearing Officer. Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

/s/ Kalun Lee
Kalun Lee
Hearing Officer

NOTICE OF RIGHT TO APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.